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10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**

12 BIRDDOG TECHNOLOGY LIMITED,
13 an Australian company; and BIRDDOG
14 AUSTRALIA PTY LTD, an Australian
company,

15 Plaintiffs,

16 *v.*

17 2082 TECHNOLOGY, LLC DBA
18 BOLIN TECHNOLOGY, a California
limited liability company; HOI "KYLE"
25, inclusive,

19 Defendants.

20 Case No. 2:23-cv-09416 CAS (AGRx)

21 **DEFENDANTS 2082
TECHNOLOGY, LLC AND KYLE
LO'S SUPPLEMENTAL
OPPOSITION TO PLAINTIFFS'
APPLICATIONS FOR RIGHT TO
ATTACH ORDER AND WRIT OF
ATTACHMENT (PURSUANT TO
COURT ORDER, DKT. 48)**

22 *[Filed concurrently with Supplemental
Declaration of Kyle Lo, Supplemental
Declaration of Molly J. Magnuson,
Request for Judicial Notice, Evidentiary
Objections, and Responses to Plaintiffs'
Evidentiary Objections]*

23 Hearing Date: February 13, 2024
24 Time: 10:00 a.m.
Judge: Hon. Alicia G. Rosenberg
Courtroom: 550

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1 Pursuant to the Court’s January 29, 2024 Order (Dkt. 48), Defendants 2082
 2 Technology, LLC dba Bolin Technology (“2082”) and Hoi “Kyle” Lo (collectively,
 3 the “2082 Defendants”) hereby submit this Supplemental Opposition to the
 4 Applications for Right to Attach Order and Writ of Attachment (the “Applications”)
 5 filed by plaintiffs Birddog Technology Limited (“Bird Dog Technology”) and
 6 Birddog Australia Pty Ltd (“Bird Dog Australia”) (collectively, “BirdDog” or
 7 “Plaintiffs”).

8 **I. PRELIMINARY STATEMENT AND SUMMARY OF ARGUMENT**

9 The 2082 Defendants appreciate the opportunity to address the new theories
 10 and assertions now being offered by Plaintiffs to support their request for the harsh
 11 remedy of an attachment. The brief history of this proceeding already reveals that
 12 Plaintiffs change tacks and propose new arguments each time after their prior ones
 13 have been shot down. Most recently, through their Reply papers and their recently
 14 filed First Amended Complaint (“FAC”), Plaintiffs now base their Applications on
 15 an alleged alter ego theory.

16 In their Reply, Plaintiffs offer conflicting and internally inconsistent theories,
 17 including that one of terms of their contracts with Bolin China was that 2082, an
 18 unmentioned non-signatory, would also be a party to the contracts at issue and that
 19 2082 and Bolin China are one and the same company. Neither theory is alleged in
 20 either of Plaintiffs’ two Complaints, and neither theory is true.

21 No matter how they cast and recast their claims, and no matter how much
 22 invective they put forth, Plaintiffs’ Applications lack the most essential element –
 23 evidentiary support. Their histrionics notwithstanding, Plaintiffs do not and cannot
 24 support their request with evidence – much less to the level of demonstrating the
 25 probable validity of their claims against the 2082 Defendants, as required to support
 26 the requested drastic relief.¹

27
 28 ¹ Plaintiffs ignore the evidence and in essence ask the Court to do the same. For
 example, Plaintiffs argue that the “only evidence in support of [the 2082

1 For example, no matter how Plaintiffs may now try and spin it, they cannot
 2 deny or escape the following facts, among others:

3 • That 2082 and Bolin China are separate legal entities with entirely separate
 4 ownership. Neither 2082, nor Kyle Lo, nor Jennifer Lee holds any ownership
 5 interest in Bolin China, and Bolin China does not hold any ownership interest in
 6 2082;

7 • That the \$3 million that Plaintiffs paid to Bolin China and now seek to attach
 8 from the 2082 Defendants was paid only to Bolin China, not to 2082 or to Mr.
 9 Lo; and

10 • That the \$3 million was paid pursuant to purchase orders entered into with
 11 Bolin China.²

12 Faced with these indisputable facts, Plaintiffs point to 2082's trademark
 13 registration of the mark "Bolin Technology," 2082's website and LinkedIn pages
 14 that show its Brea address and a relationship with Bolin China, and that Mr. Lo
 15 works for both 2082 and Bolin China. That hardly equates to any alter ego
 16 relationship. Indeed, the 2082 Defendants do not deny – in fact, have affirmatively
 17 acknowledged – that 2082 works with Bolin China as a marketer and distributor.
 18 Thus, it is hardly surprising that 2082 uses the fictitious name Bolin Technology,
 19 that it has secured a U.S. trademark for that name, and that it would refer on social
 20 media to its relationship with Bolin China. None of that in any way translates to
 21 concluding that both companies – or all the defendants for that matter – are one and
 22 the same, as Plaintiffs urge. While 2082 has a close business relationship with Bolin
 23

24 Defendants'] narrative is Mr. Lo's testimony" (Reply at 3:3-5), disregarding that the
 25 Opposition also is supported by significant documentary evidence, including the
 26 purchase orders and wire transfer records on which Plaintiffs themselves rely, as
 27 well as a declaration from Jennifer Lee, the COO of 2082. Moreover, and as
 28 discussed herein, Plaintiffs, not the 2082 Defendants, are the ones that bear the
 burden of proof – a burden Plaintiffs have not satisfied.

² Plaintiffs repeatedly accuse the 2082 Defendants, and Mr. Lo in particular, of
 falsehoods. Those accusations – no matter how often they are stated or how much
 they are bolded or italicized in text – are without basis.

1 China, the companies conduct business through arms' length transactions, there is
 2 no commingling of assets, sharing of profits or bank accounts, or
 3 undercapitalization. Plaintiffs do not submit any evidence to even call that into
 4 question or otherwise establish any of the hallmarks of an alter ego relationship.

5 Instead, Plaintiffs make various conclusory assertions in their Reply as to
 6 2082's alleged domination of Bolin China, alleged receipt of Plaintiffs' \$3 million,
 7 and alleged entry into the purchase orders. Merely making those statements does
 8 not make them so. Not only do these assertions go beyond Plaintiffs' newly filed
 9 FAC, but also, Plaintiffs submit no evidence to support them, and what they do
 10 submit contradicts them. In the end, and as discussed further below, Plaintiffs have
 11 no meritorious claims against 2082 and Mr. Lo, let alone with the probable validity
 12 required to support the Applications. Nor do Plaintiffs have any evidence to support
 13 their alter ego theory, much less sufficient evidence to show a likelihood of
 14 prevailing on the merits.

15 Notably, Bolin China recently filed an \$8 million lawsuit against Plaintiffs in
 16 Plaintiffs' home country of Australia for, among other things, breach and
 17 repudiation of contract. Supplemental Declaration of Molly J. Magnuson ("Suppl.
 18 Magnuson Decl.") Ex. 4. At a minimum, this separate lawsuit underscores that the
 19 breaches of contract at issue in this case are very much disputed, as Bolin China
 20 claims it is Plaintiffs, not Bolin China, that are in breach. Among other things,
 21 Bolin China alleges that, after it had purchased the components, researched and
 22 developed the customized cameras for BirdDog, and even completed the
 23 manufacture of a number of the cameras, Plaintiffs informed Bolin China that they
 24 wished to cancel their purchase orders due to a decline in sales. Bolin China further
 25 alleges that it has cameras manufactured and ready to ship that Plaintiffs have not
 26 paid for.

27 Accordingly, regardless of the theory they employ and for the reasons set
 28 forth below and in the 2082 Defendants' Opposition, Plaintiffs' Applications against

1 the 2082 Defendants should be denied.

2 **II. BIRDDOG IS NOT ENTITLED TO THE REQUESTED WRIT OF**
 3 **ATTACHMENT**

4 **A. Plaintiffs Cannot Demonstrate a Probability of Prevailing on Any**
 5 **Claim for Direct Liability Against the 2082 Defendants.**

6 In their Reply, Plaintiffs make a number of misleading statements, including
 7 new assertions that they “contracted with both [2082] and Bolin [China]” and that
 8 2082 “*is* a party to the contracts,” all of which attempt to give the impression that
 9 Plaintiffs are pursuing claims against the 2082 Defendants under a direct theory of
 10 liability. Reply at 7:27-8:3, 8:13-14 (emphasis in original). But these are red
 11 herrings, as Plaintiffs effectively concede there is no basis for direct liability against
 12 the 2082 Defendants. Indeed, in direct response to the 2082 Defendants’ motion to
 13 dismiss Plaintiffs’ initial Complaint and their Opposition to the Applications
 14 demonstrating that 2082 was not a party to the contracts at issue, Plaintiffs amended
 15 their Complaint to name as a defendant the contracting party (Bolin China) and to
 16 further allege that Bolin China was acting as the 2082 Defendants’ “alter ego”
 17 pursuant to a “single, united enterprise.”³ *See* FAC ¶ 13.

18 In their Reply, Plaintiffs acknowledge that 2082 was not a party to the written
 19 purchase orders and did not receive their deposit payments. *See id.* at 8:22-24,
 20 10:25, 11:22-23. The contracts at issue were, as Plaintiffs acknowledge, between
 21 BirdDog and Bolin China. Although it is difficult to find a coherent theory in
 22 Plaintiffs’ Reply, Plaintiffs appear to try to get around this fundamental flaw by now
 23 arguing, often inconsistently, that (1) the contracts at issue were with both Bolin
 24 China and 2082 simultaneously, or (2) 2082 and Bolin China are one and the same
 25 and the Court should disregard their separate existences, despite that they are two

26
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 28 ³ Plaintiffs’ contention that 2082 was a party to the purchase orders pursuant to
 purported verbal representations by Mr. Lo that he was acting on behalf of a
 “unified Bolin enterprise” (Reply at 8:16-22) – which is very much disputed –
 would not make 2082 a party to those purchase orders.

1 legally separate companies, with separate owners, incorporated in two different
 2 countries, or (3) Bolin China is the alter ego of 2082 and Mr. Lo and, therefore, the
 3 2082 Defendants are liable for Bolin China's alleged breaches.

4 All these arguments lack merit. With respect to Plaintiffs' claim that 2082
 5 itself was a party to the contracts, Plaintiffs argue that the 2082 Defendants'
 6 "characterization of the six purchase orders as the contracts is misleading" because,
 7 in actuality, the contracts at issue were supposedly "written and oral" and one of the
 8 (newly) alleged oral terms and conditions was Mr. Lo's purported representation
 9 that "he was the CEO of a unified Bolin enterprise with which Plaintiffs were
 10 contracting." Reply at 8:13:24. Setting aside that Mr. Lo never made any such
 11 representation to Plaintiffs (Supplemental Declaration of Kyle Lo ("Suppl. Lo
 12 Decl.") ¶¶ 5, 7), nowhere in the FAC do Plaintiffs allege this as a purported "term"
 13 of their alleged contracts with Bolin China or a term that was purportedly breached.
 14 See FAC ¶¶ 69-83. The only specific terms alleged in the FAC are those reflected in
 15 the six purchase orders Plaintiffs included with their Applications – purchase orders
 16 between BirdDog Australia and Bolin China – and in the wire transfer records
 17 reflecting the transaction and transfer of money between BirdDog Australia and
 18 Bolin China. *See id.*⁴

19 Plaintiffs' new alternative theory of liability that 2082 and Bolin China are
 20 not "separate entities" (see, e.g., Reply at 6:18) also has no evidentiary support and,
 21 importantly, also no precedent under the law. The evidence unequivocally
 22 demonstrates that Bolin China and 2082 are two separate legal entities: Bolin China
 23 is a company organized under the laws of China in 2008 and 2082 is an LLC
 24 organized under the laws of the State of California in 2015. Lee Decl. Ex. 1 (Dkt.

25 ⁴ Plaintiffs submit a self-serving statement from Dan Miall that Plaintiffs would not
 26 have contracted with Bolin China independent of 2082. Reply at 8:22-24. This is
 27 both not true and illogical. Plaintiffs had contracted for years with Bolin China
 28 before the purchase orders at issue and, as Plaintiffs readily admit, the relationship
 was good for those years. To assume the six purchase orders at issue would not
 have been placed but for these alleged representations by Mr. Lo defies logic. In
 any event, it does not make 2082 a contracting party.

1 33-4); Magnuson Decl. Exs. 1-2 (Dkt. 33-7, 33-8); Lo Decl. (Dkt. 33-1) ¶¶ 2, 4; *see*
 2 *also* FAC ¶¶ 10-11. In fact, Plaintiffs were well aware of the distinction between
 3 2082 and Bolin China, as they would separately contract with 2082 when the need
 4 for 2082's services arose. Lee Decl. (Dkt. 33-3) ¶ 8.

5 Plaintiffs do not dispute these facts but instead argue ad nauseum that 2082
 6 doing business as "Bolin Technology" under a fictitious business name and holding
 7 itself out by its DBA as "Bolin Technology" somehow renders it the same legal
 8 entity as Bolin China. Not so. 2082's fictitious business name, as registered with
 9 Los Angeles and Orange counties, and as used by 2082 – Bolin Technology – is a
 10 legal fiction. The legal entity remains 2082. Having a DBA, filing a trademark
 11 application for use of that DBA, and otherwise using that fictitious name does not
 12 change this, and certainly does not mean that 2082 and Bolin China are one and the
 13 same.

14 Plaintiffs refer to the Manufacturing Agreement, but that undermines their
 15 argument that Mr. Lo was acting on behalf of 2082. That Agreement demonstrates
 16 on its face that Mr. Lo sent this letter on behalf of "Bolin Technology" in Shenzhen,
 17 China, i.e., Bolin China. Reply at 5:17-20, citing Reply Miall Decl. Ex. A. Nothing
 18 in this document indicates that 2082 is even a party. *Id.*

19 Plaintiffs go so far in their Reply as to suggest that Mr. Lo's relationship both
 20 with Bolin China and with 2082 "extinguish[es] the notion [they] are completely
 21 separate entities." Reply at 7:20-21.⁵ Working for two companies, of course, does
 22 not mean those companies cannot be separate legal entities. The law is clear that
 23 even closely related companies are legally separate entities and must be treated as
 24 such. *Cat Coven LLC v. Shein Fashion Grp., Inc.*, No. CV 19-7967 PSG (GJSx),
 25 2020 WL 3840440, at *5 (C.D. Cal. Mar. 12, 2020) ("Related corporations are
 26 presumed to be separate entities; thus, the conduct of one cannot be imputed to the

27 ⁵ Plaintiffs also cite to an online article as purported evidence that Bolin China and
 28 2082 are the same company. Reply at 6:21-7:6. Not only does the article not
 establish this fact, it is inadmissible hearsay.

1 other absent evidence that one acted as the agent or alter-ego of another or there was
 2 some other failure to observe corporate formalities.”) (internal quotations omitted);
 3 *see also Semper v. JBC Legal Grp.*, No. C04-2240L, 2005 WL 2172377, at *4
 4 (W.D. Wash. Sept. 6, 2005) (“Although JBC and Outsource Recovery Management
 5 . . . are closely related, they are separate legal entities. Plaintiff has provided no
 6 evidence in support of her vague argument that the corporate forms should be
 7 disregarded.”).

8 Because there are no contracts at issue between Plaintiffs and the 2082
 9 Defendants, and because the 2082 Defendants did not receive any funds from
 10 Plaintiffs – as the evidence demonstrates – Plaintiffs cannot state any claim
 11 whatsoever against the 2082 Defendants for breach of contract or otherwise. Thus,
 12 there is no basis for this lawsuit at all, let alone for the harsh relief sought in the
 13 Applications – and much less with the probable validity of prevailing as required.⁶

14 Finally, there also is no basis for liability against Mr. Lo to support the
 15 Applications. According to Plaintiffs, the predicate claims against Mr. Lo –
 16 conversion, money had and received, and Violation of Penal Code Section 496 for
 17 receiving allegedly stolen property – “all arise out of Mr. Lo’s [alleged] statements
 18 and conduct as the CEO” of both 2082 (which Plaintiffs admit did not receive the
 19 deposit payments) and Bolin China. Reply at 9:25-10:3. Mr. Lo never received
 20 these funds from Plaintiffs nor had access to these funds.⁷ Lo Decl. (Dkt. 33-1) ¶¶

21 ⁶ These arguments are also the subject of the 2082 Defendants’ pending motion to
 22 dismiss the FAC under Rule 12(b)(6) of the Federal Rules of Civil Procedure, which
 23 is scheduled to be heard on February 26, 2024. Dkt. 47. In addition, the motion
 24 demonstrates that Plaintiffs’ claims fail under California’s economic loss doctrine.
 25 Plaintiffs incorrectly argue that the economic loss rule does not bar conversion and
 related claims (Reply at 12:3-16) notwithstanding relevant authority to the contrary.
See, e.g., Motivo Eng’g, LLC v. Black Gold Farms, No. 222CV01447CASJCX,
 2022 WL 3013227, at *4 (C.D. Cal. June 27, 2022).

26 ⁷ Plaintiffs argue that “it is only necessary to show an assumption of control or
 27 ownership over the property.” Reply at 10:18-21, quoting *Shopoff & Cavello LLP v.*
Hyon, 167 Cal. App. 4th 1489, 1507 (2008). But neither *Shopoff*, which concerns a
 trustee’s interpleading of disputed funds, nor any of the other cases cited by
 Plaintiffs, found an assumption of control by someone with no right to convert the
 property for his or her own use. *See Shopoff*, 167 Cal. App. 4th at 1508 (“Where

1 7-9. Plaintiffs have submitted no evidence to the contrary. Accordingly, there is no
 2 claim to support an attachment as to Mr. Lo.⁸

3 **B. Plaintiffs Cannot Demonstrate a Probability of Prevailing on Their
 4 Claim that Bolin China is an Alter Ego of the 2082 Defendants.**

5 Under California law, “alter ego liability ‘is an extreme remedy, sparingly
 6 used.’” *Riot Games, Inc. v. Suga PTE, Ltd.*, 638 F. Supp. 3d 1102, 1120 (C.D. Cal.
 7 2022), quoting *Hasso v. Hapke*, 227 Cal. App. 4th 107, 155 (2014). “[T]hus, the
 8 corporate form will be disregarded only in narrowly defined circumstances and only
 9 when the ends of justice so require.” *Gerritsen v. Warner Bros. Ent. Inc.*, 116 F.
 10 Supp. 3d 1104, 1136 (C.D. Cal. 2015), quoting *Mesler v. Bragg Mgmt. Co.*, 39 Cal.
 11 3d 290, 300 (1985). The party seeking to disregard the corporate form bears the
 12 burden of proving that two conditions are satisfied: “First, there must be such a
 13 unity of interest and ownership between the corporation and its equitable owner that
 14 the separate personalities of the corporation and the shareholder do not in reality
 15 exist. Second, there must be an inequitable result if the acts in question are treated
 16 as those of the corporation alone.” *Id.*, quoting *Sonora Diamond Corp. v. Super.*
 17 *Ct.*, 83 Cal. App. 4th 523, 526 (2000).

18 Plaintiffs here have no evidence whatsoever to support their alter ego theory,
 19 let alone evidence sufficient to show a likelihood of prevailing on either prong of the
 20 alter ego test, much less both prongs. Thus, there is no basis for the Court to
 21 disregard the corporate form and impose the harsh remedy sought by the
 22 Applications.

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 24
 25 Hyon’s conversion cause of action patently flounders, however, is in the failure to
 26 assert the essential elements that Shopoff exercised dominion over the Recovery
 27 proceeds and converted them to his own use.”).

28 ⁸ Additionally, imposing individual liability on a corporate officer for wrongful acts
 29 of or on behalf of a corporation, as these acts are alleged to be, is not generally
 30 allowed unless the acts go beyond the scope of the duties to the corporation. See
Lashify, Inc. v. Urb. Dollz LLC, No. CV 22-6148-GW-AFMX, 2022 WL 18278638,
 at *8 (C.D. Cal. Dec. 13, 2022).

1. Plaintiffs Have No Evidence of Unity of Ownership and Interest.

3 Plaintiffs do not and cannot demonstrate a sufficient “unity of ownership and
4 interest” between 2082 and Bolin China “such that the separate personalities of the
5 two entities no longer exist.” *Id.* at 1136. Fatal to Plaintiffs’ alter ego theory, there
6 is no unity of ownership between 2082 and Bolin China. 2082’s only two members
7 are Mr. Lo and Ms. Lee, and neither they nor 2082 is a shareholder of Bolin China.
8 Lo Decl. (Dkt. 33-1) ¶¶ 2, 4; Lee Decl. (Dkt. 33-3) ¶ 5; Magnuson Decl. (Dkt. 33-8)
9 Ex. 2. In the face of this evidence, and without evidence of their own to contradict
10 it, Plaintiffs misrepresent to the Court that “Mr. Lo does not deny that he and Ms.
11 Lee control the entity that he calls ‘Bolin China.’” Reply at 3, n.2. In fact, Mr. Lo
12 does deny this. Lo Decl. (Dkt. 33-1) ¶¶ 2, 4. Plaintiffs’ arguments are unsupported
13 by evidence and should be rejected.

14 The Ninth Circuit has held that common legal or equitable “[o]wnership is a
15 prerequisite to alter ego liability, and not a mere ‘factor’ or ‘guideline.’” *S.E.C. v.*
16 *Hickey*, 322 F.3d 1123, 1128 (9th Cir. 2003); *In re Schwarzkopf*, 626 F.3d 1032,
17 1039 (9th Cir. 2010). Here, it is undisputed that there is no common legal
18 ownership between 2082 and Bolin China. For the reasons set forth below, there is
19 also no common equitable ownership, which requires an “[e]xercise of extreme
20 dominion over the [alter ego] corporation . . . and thus merely showing that the
21 corporation is ‘influenced and governed by [the defendant]’ is insufficient.” *Conde*
22 *v. Sensa*, No. 14-CV-51 JLS WVG, 2016 WL 6082309, at *3 (S.D. Cal. Oct. 17,
23 2016), quoting *Firstmark Cap. Corp. v. Hempel Fin. Corp.*, 859 F.2d 92, 94 (9th
24 Cir. 1988).

25 Nor do the remaining factors weigh in favor of imposing alter ego liability.
26 Again, Plaintiffs have no evidence to support such a theory, and no amount of
27 bolded and italicized terms in their Reply will change this.

1 Mr. Lo is the only individual who works for both 2082 and Bolin China.
 2 Overlap between two related companies' officers or directors "by itself, is merely
 3 indicative of a common form of corporate governance," but alone does not justify
 4 piercing the corporate veil. *See Gerritsen*, 116 F. Supp. 3d at 1139; *see also*
 5 *Maddock v. KB Homes, Inc.*, 631 F. Supp. 2d 1226, 1243 (C.D. Cal. 2007)
 6 ("Interlocking directorates . . . is not, in and of itself, sufficient without direct
 7 evidence of specific manipulative conduct to warrant the piercing of the corporate
 8 veil."); *Snyder v. Enterprise Rent-A-Car Co. of San Francisco*, 392 F. Supp. 2d
 9 1116, 1122 n.7 (N.D. Cal. 2005), quoting *Instit. of Veterinary Pathology, Inc. v. Cal.*
 10 *Health Labs., Inc.*, 116 Cal. App. 3d 111, 120 (1981) (holding parent corporation
 11 liable for tort of subsidiary "only where the parent controls the subsidiary to such a
 12 degree as to render the latter the mere instrumentality of the former"). Similarly,
 13 "the fact that [two related corporations] share the same office location, or the same
 14 website and telephone number, does not necessarily reflect an abuse of the corporate
 15 form and existence of an alter ego relationship." *Gerritsen*, 116 F. Supp. 3d at 1139.

16 At most, Plaintiffs' purported "evidence" on Reply shows that 2082 – an
 17 authorized wholesaler and re-seller of Bolin China's products – was doing business
 18 as "Bolin Technology." This is hardly sufficient to show a unity of interest.
 19 Contrary to the self-serving declaration of Plaintiffs' CEO, Dan Miall, Mr. Lo never
 20 represented that he was acting as the CEO of a "unified Bolin Enterprise," and
 21 Plaintiffs did not order the cameras at issue here through 2082. Suppl. Lo Decl. ¶¶
 22 4-5. While it is undisputed that there is a business relationship between 2082 and
 23 Bolin China, the undisputed evidence demonstrates that their transactions are at
 24 arms-length, they functioned as separate entities, and 2082 observes its separate
 25 corporate formalities. *Id.* ¶ 2. For example, 2082 maintains its own bank accounts
 26 and does not share bank accounts with Bolin China or otherwise have access to
 27 Bolin China's bank accounts. Lee Decl. (Dkt. 33-3) ¶ 5. 2082 also does not share
 28 in any of the revenue or expenses, profits or losses, of Bolin China, or commingle

1 assets with Bolin China. *Id.* ¶ 6; Suppl. Lo Decl. ¶¶ 2-3. Rather, Bolin China
 2 invoices 2082 for the products that 2082 buys and resells, and 2082 pays Bolin
 3 China pursuant to these invoices, just as would be the case in any arms' length
 4 transaction. Lee Decl. (Dkt. 33-3) ¶ 4; Suppl. Lo Decl. ¶¶ 2-3. Moreover, 2082 is
 5 not undercapitalized as Plaintiffs allege (FAC ¶ 13), as 2082's profit derives from its
 6 distribution and resale business. Supp. Lo Decl. ¶ 3. Plaintiffs do not offer any
 7 evidence to the contrary – much less the significant evidence required for such an
 8 extreme remedy.

9 **2. Plaintiffs Cannot Show an Inequitable Result if Bolin China
 10 is Treated as a Separate Entity.**

11 Plaintiffs similarly fail to establish the second prong of alter ego, i.e., that
 12 there would be an inequitable result if Bolin China is treated as a separate entity.
 13 “The ‘inequitable result’ prong of alter ego liability exists to address circumstances
 14 in which ‘adherence to the fiction of the separate existence of the corporation would,
 15 under the particular circumstances, sanction a fraud or promote injustice.’”

16 *Gerritsen*, 116 F. Supp. 3d at 1143, quoting *First Western Bank & Trust Co. v.*
 17 *Bookasta*, 267 Cal. App. 2d 910, 914-15 (1968). Therefore, “it is not sufficient to
 18 merely show that a creditor will remain unsatisfied if the corporate veil is not
 19 pierced.” *Neilson v. Union Bank of California, N.A.*, 290 F. Supp. 2d 1101, 1117
 20 (C.D. Cal. 2003), quoting *Mid-Century Ins. Co. v. Gardner*, 9 Cal. App. 4th 1205,
 21 1213 (1992). “California courts generally require some evidence of bad faith
 22 conduct on the part of defendants before concluding that an inequitable result
 23 justifies an alter ego finding.” *Id.* See also *Gerritsen*, 116 F. Supp. 3d at 1143
 24 (“Bad faith is a critical factor in the analysis.”).

25 In the FAC, Plaintiffs allege that there will be an inequitable result if Bolin
 26 China is not treated as an alter ego because (1) both Bolin China and 2082 are
 27 “undercapitalized and are potentially incapable of satisfying a judgment,” and (2) “it
 28 would be unjust if [the 2082 Defendants] were to escape liability” because they also

1 benefitted from Bolin China's alleged conduct. FAC ¶ 13. Plaintiffs offer no
 2 evidence, however, to satisfy this element. Plaintiffs also "ha[ve] not identified any
 3 right that will be defeated" if 2082 is "allowed to maintain a separate identity" from
 4 Bolin China. *Wady v. Provident Life & Accident Ins. Co. of Am.*, 216 F. Supp. 2d
 5 1060, 1070 (C.D. Cal. 2002). And, most importantly, Plaintiffs do not and cannot
 6 show that the 2082 Defendants used Bolin China for some improper purpose or that
 7 the 2082 Defendants benefitted from their relationship to Bolin China in this
 8 situation. They did not. Nor have Plaintiffs submitted any evidence to support that
 9 2082 was trying to hide behind Bolin China; nor could they. While Plaintiffs feign
 10 surprise in their Reply that 2082 and Bolin China are legally separate entities, their
 11 own evidence – including the purchase orders and wire transfer records – reflects
 12 that Plaintiffs knew that 2082 was and is a separate entity from the one they had
 13 contracted with for years to fulfill their purchase orders and receive their deposit
 14 payments.

15 **3. Plaintiffs Cannot Show a Likelihood of Prevailing on Their
 16 Substantive Claims Against Bolin China in the First Instance.**

17 In their Reply, Plaintiffs contend that they are entitled to writs of attachment
 18 against the 2082 Defendants "*even if* there are grounds for an attachment" against
 19 newly named defendant Bolin China, and that Bolin China's liability "will be
 20 separately 'adjudicated in connection with Plaintiffs' First Amended Complaint.'" See Reply at 4:1-5; Pls.' Responses to Mot. To Strike Reply (Dkt. 44), at 3, n.2 (quoting Reply at 3:10-11). But under their alter ego theory of liability, Plaintiffs must establish Bolin China's liability by a preponderance of the evidence *before* they can obtain writs of attachment against the 2082 Defendants.⁹

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 26 ⁹ Plaintiffs' reliance on *Iraq Telecom Ltd. v. IBL Bank S.A.L.*, 43 F. 4th 263 (2d Cir. 2022) is misplaced. Reply at 4:5-9. This case did not concern alter ego liability but, rather, joint tortfeasors, for which the court declined to reduce the attachment amount against one by apportioning more blame to the other. *Id.* at 274. Notably in that case, the request for an attachment came only *after* an arbitration panel had found that the joint tortfeasors had "acted in concert" to defraud the plaintiff of \$97

1 As set forth in the 2082 Defendants' pending Motion to Dismiss (Dkt. 47-1),
 2 alter ego liability is merely a "procedural mechanism by which an individual [or
 3 another corporation] can be held jointly liable for the wrongdoing of his or her
 4 corporate alter ego." *Double Bogey, L.P. v. Enea*, 794 F.3d 1047, 1051-52 (9th Cir.
 5 2015), citing *Mesler*, 39 Cal. 3d at 301. A claim against a defendant based on an
 6 alter ego theory of liability is "'not itself a claim for substantive relief,'" such as for
 7 breach of contract, but rather is "derivative of the substantive cause of action against
 8 the [alter ego]." *Smith v. Simmons*, 638 F. Supp. 2d 1180, 1190 n.14 (E.D. Cal.
 9 2009), *aff'd* 409 F. App'x 88 (9th Cir. 2010), quoting *Hennessey's Tavern, Inc. v.*
 10 *Am. Air Filter Co.*, 204 Cal. App. 3d 1351, 1359 (1988).

11 It follows that a party can only receive a writ of attachment under an alter ego
 12 theory of liability if the attachment is justified under its substantive causes of action.
 13 *See Hamilton Beach Brands*, 614 F. Supp. 2d at 1082-83 ("California law allows
 14 writs of attachment to issue against an entity or individual who is not a party to a
 15 contract *if that entity or individual is the alter ego of the party whose property is*
 16 *subject to attachment.*") (internal citations omitted; emphasis added). Therefore,
 17 courts typically consider requests for attachment against a defendant under an alter
 18 ego theory concurrently with, or after the court has already granted, a request for
 19 writ of attachment against the corporation that is the alleged alter ego. *See id.*
 20 (considering and denying request for writ of attachment against defendant under
 21 single enterprise theory after ordering writ of attachment against alleged alter ego);
 22 *see also Ming Glob. Ltd. v. Monarch Holdings, Inc.*, No. 8:20-cv-01852-JVS-KES,
 23 2020 WL 7265411, at *1 (C.D. Cal. Oct. 13, 2020) (same).

24 Plaintiffs here ask the Court to consider the Applications out of order, before
 25 they have ever established the basis for a writ of attachment against Bolin China.
 26 Thus, at this juncture, even if Plaintiffs could satisfy their burden as to alter ego
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28 million and, as the Second Circuit noted, "the district court correctly held [that] [the
 plaintiff] is likely to establish joint and several liability." *Id.* at 276.

1 liability, which they have failed to do, their Applications nevertheless fail because
2 Plaintiffs have not shown a likelihood of prevailing on their substantive claims
3 against Bolin China. Plaintiffs place the 2082 Defendants in the unusual position of
4 opposing the Applications without having the benefit of Bolin China's response to
5 Plaintiffs' substantive claims. As demonstrated by the recent complaint filed by
6 Bolin China against Plaintiffs in Australia, Bolin China not only disputes Plaintiffs'
7 recitation of the facts, it claims damages in excess of \$8 million based on Plaintiffs'
8 repudiation and breach of contracts. *See generally* Suppl. Magnuson Decl. Ex. 4.
9 At a minimum, this demonstrates that Bolin China was the actual contracting party
10 and that its direct liability (not to mention the 2082 Defendants' secondary liability)
11 is very much in dispute.

12 Thus, even putting aside Plaintiffs' complete failure to satisfy their burden on
13 alter ego liability, Plaintiffs have not established a probability of prevailing against
14 Bolin China.

15 **C. Plaintiffs' Own Arguments Demonstrate the Inadequacy of the
16 Requested Undertaking.**

17 Although the 2082 Defendants believe there is no merit to the Applications to
18 begin with, if the Court is nonetheless inclined to consider them, the 2082
19 Defendants respectfully request the opportunity to separately address the amount of
20 the undertaking given the \$10,000 amount proposed by Plaintiffs would be woefully
21 inadequate to compensate the 2082 Defendants if it is ultimately determined that the
22 attachment was wrongful. *See* Cal. Civ. Proc. Code § 489.220.

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III. CONCLUSION

For the foregoing reasons, and for the reasons set forth in their initial Opposition, the 2082 Defendants respectfully request that the Court deny Plaintiffs' Applications.

Dated: February 7, 2024

UMBERG ZIPSER LLP

s/ Molly J. Magnuson

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CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for the 2082 Defendants, certifies that this brief contains 5,797 words, which complies with the word limit of L.R. 11-6.1.

Dated: February 7, 2024

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